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12 UNITED STATES DISTRICT COURT

13 DISTRICT OF NEVADA

14 CHRISTOPHER L. BIRD,) Case No. 3:10-cv-00649-RCJ-VPC
15 Plaintiff,)
16)
17 vs.)
18)
19 RECONTRUST COMPANY, N.A.,)
20 BAC HOME SERVICING, LP, a)
21 subsidiary of BANK OF)
22 AMERICA, N.A., f/k/a)
23 COUNTRYWIDE HOME LOANS)
24 SERVICING LP, MORTGAGE)
25 ELECTRONIC REGISTRATION)
26 SYSTEMS, INC., JOHN DOES)
27 1 through 10; and DOE)
28 CORPORATIONS 1 through 10,)
Defendants.)
)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

20 This matter came on for trial May 3 and 4, 2012. The
21

22 Court makes the following findings of fact:

FINDINGS OF FACT

23
24 1. Plaintiff had a loan with Taylor, Bean & Whitaker
25 Mortgage Co. ("TBW") evidenced by a promissory note dated
26 April 29, 2008, for \$89,320 at 6.5% interest that called for
27 monthly payments of \$564.50 commencing on June 1, 2008. That
28

1 note was variously referred to as TBW loan #24 or 2450521 or
2 Bank of America account #22566382 or the 6.5% loan. Ex. 1B in
3 evidence.

4

5 2. Ex. 1B was secured by a deed of trust dated
6 April 29, 2008, in favor of TBW on Plaintiff's home at 305
7 Mica Circle, Moundhouse, Lyon County, Nevada. Ex. 1A.

8

9 3. Exs. 1A and 1B were refinanced by TBW on May 18,
10 2009, as shown on Exs. 12A-D in evidence which paid off Ex.
11 1B. Ex. 12D is a note referred to as TBW 32 or #3246027 for
12 \$89,983 at 5.25% interest with payments of \$498.89 per month.

13

14 4. TBW assigned Exs. 1A and 1B to Defendants.

15

16 5. Defendants foreclosed pursuant to Ex. 1A for
17 Plaintiff's nonpayment since May 18, 2009 on Ex. 1B on Septem-
18 ber 17, 2009.

19

20 6. Plaintiff signed Exs. 12A-D and delivered them to a
21 representative of TBW according to his testimony that was not
22 disputed by Defendants.

23

24 7. Plaintiff received Ex. 14A (monthly billing
25 statement) from TBW for two payments on Ex. 12D dated July 21,
26 2009.

27

28 8. Plaintiff paid Ex. 14A on July 31, 2009 with his
check #1287 that was endorsed by TBW on August 4, 2009. Ex.
14B.

29

30 9. Plaintiff plead as special damages his attorney's
fees and costs.

1 10. Plaintiff's attorney's fees and costs are in
2 evidence without objection as Exs. 16 and 16A. Ex. 16A
3 includes the charges in Ex. 16. Plaintiff's attorney's fees
4 and costs were \$98,809.37 as of March 30, 2012 as shown on Ex.
5 16A.

6
7 11. Plaintiff put Defendants on notice of the
8 refinancing prior to the foreclosure sale on September 17,
9 2009.

10 CONCLUSIONS OF LAW

11 The Court makes the following conclusions of law:

12 1. Ex. 1B was paid in full by Ex. 12D thereby funding
13 Ex. 12D.

14 2. There was no balance owing on Ex. 1B at the time
15 Defendants foreclosed on September 17, 2009.

16 3. Plaintiff signed and delivered to TBW Exs. 12A-D.

17 4. Exs. 14A and 14B constitute a written contract for
18 TBW loan #3246027, Ex. 12D. Ex. 14A is an offer by TBW, Ex.
19 14B is an acceptance of TBW'S offer and consideration. TBW'S
20 endorsement on Ex. 14B is a writing signed by TBW that
21 satisfies the statute of frauds.

22 5. Defendants' acceptance of the assignment of Exs. 1A
23 and 1B included everything TBW had regarding Exs. 1A and 1B
24 which included the refinance evidenced by Exs. 12A-D.

25 6. Ex. 12D deed of trust was effective upon delivery to
26 TBW'S representative at Plaintiff's home.

7. Defendants are required to record a reconveyance of
Ex. 1A with the Lyon County, Nevada Recorder.

8. Plaintiff is required to sign a new replacement promissory note and deed of trust suitable for recording if Defendants cannot locate the signed original (Ex. 12D).

9. Defendants are to give Plaintiff credit for \$1,187.38 that Plaintiff paid TBW on July 31, 2009, which was for two payments on Ex. 12D, including impounds. See Ex. 14B.

10. Plaintiff is entitled to his court costs that shall be submitted to the Court by a Bill of Costs pursuant to local court rules.

11. Plaintiff is entitled to attorney's fees in the discretion of the Court pursuant to NRS 18.010(2)(a).

Plaintiff has recovered \$1,187.38 as set out in paragraph 9 above but less than \$20,000.

12. When TBW issued Ex. 14A, it waived the closing conditions of Exs. 12A-D.

13. Defendants acted in good faith, therefore no punitive damages are awarded.

IT IS SO ORDERED this 15th day of October, 2013.

R. James
U.S. DISTRICT COURT JUDGE